

Article 2B.

Administration of Employer Accounts.

§ 96-11: Repealed by Session Laws 2013-2, s. 2(a), effective July 1, 2013.

§ 96-11.1. Employer accounts.

The Division must maintain a separate account for each employer. The Division must credit the employer's account with all contributions paid by the employer or on the employer's behalf and must charge the employer's account for benefits as provided in this Chapter. The Division must prepare an annual statement of all charges and credits made to the employer's account during the 12 months preceding the computation date. The Division must send the statement to the employer when the Division notifies the employer of the employer's contribution rate for the succeeding calendar year. The Division may provide a statement of charges and credits more frequently upon a request by the employer. (2013-2, s. 4; 2013-224, s. 19.)

§ 96-11.2. Allocation of charges to base period employers.

Benefits paid to an individual are charged to an employer's account quarterly. Benefits paid to an individual must be allocated to the account of each base period employer in the proportion that the base period wages paid to the individual in a calendar quarter by each base period employer bears to the total wages paid to the individual in the base period by all base period employers. The amount allocated to an employer that pays contributions is multiplied by one hundred twenty percent (120%) and charged to that employer's account. The amount allocated to an employer that elects to reimburse the Unemployment Insurance Fund in lieu of paying contributions is the amount of benefits charged to that employer's account. (2013-2, s. 4; 2013-224, ss. 10, 19; 2015-238, s. 4.2(a).)

§ 96-11.3. Noncharging of benefits.

(a) To Specific Employer. – Benefits paid to an individual under a claim filed for a period occurring after the date of the individual's separation from employment may not be charged to the account of the employer by whom the individual was employed at the time of the separation if the separation is due to one of the reasons listed below and the employer promptly notifies the Division, in accordance with rules adopted by the Division, of the reason:

- (1) The individual left work without good cause attributable to the employer.
- (2) The employer discharged the individual for misconduct in connection with the work.
- (3) The employer discharged the individual solely for a bona fide inability to do the work for which the individual was hired and the individual's period of employment was 100 days or less.
- (4) The separation is a disqualifying separation under G.S. 96-14.7.

(b) To Any Base Period Employer. – Benefits paid to an individual may not be charged to the account of an employer of the individual if the benefits paid meet any of the following descriptions:

- (1) They were paid to an individual who is attending a vocational school or training program approved by the Division.

- (2) They were paid to an individual for unemployment due directly to a disaster covered by a federal disaster declaration.
- (3) They were paid to an individual who left work for good cause under G.S. 96-14.8.
- (4) They were paid as a result of a decision by the Division and the decision is ultimately reversed upon final adjudication.

(c) **Current Employer.** – At the request of the employer, no benefit charges may be made to the account of an employer that has furnished work to an individual who, because of the loss of employment with one or more other employers, is eligible for partial benefits while still being furnished work by the employer on substantially the same basis and substantially the same wages as had been made available to the individual during the individual's base period. This prohibition applies regardless of whether the employments were simultaneous or successive. A request made under this subsection must be filed in accordance with rules adopted by the Division. (2013-2, s. 4; 2013-224, s. 19; 2017-8, s. 1(b).)

§ 96-11.4. No relief for errors resulting from noncompliance.

(a) **Charges for Errors.** – An employer's account may not be relieved of charges relating to benefits paid erroneously from the Unemployment Insurance Fund if the Division determines that both of the following apply:

- (1) The erroneous payment was made because the employer, or the agent of the employer, was at fault for failing to respond timely or adequately to a written request from the Division for information relating to the claim for unemployment compensation. An erroneous payment is one that would not have been made but for the failure of the employer or the employer's agent to respond to the Division's request for information related to that claim.
- (2) The employer or agent has a pattern of failing to respond timely or adequately to requests from the Division for information relating to claims for unemployment compensation. In determining whether the employer or agent has a pattern of failing to respond timely or adequately, the Division must consider the number of documented instances of that employer's or agent's failures to respond in relation to the total requests made to that employer or agent. An employer or agent may not be determined to have a pattern of failing to respond if the number of failures during the year prior to the request is fewer than two or less than two percent (2%) of the total requests made to that employer or agent, whichever is greater.

(b) **Appeals.** – An employer may appeal a determination by the Division prohibiting the relief of charges under this section in the same manner as other determinations by the Division with respect to the charging of employer accounts.

(c) **Applicability.** – This section applies to erroneous payments established on or after October 21, 2013. (2013-2, s. 4; 2013-224, ss. 11, 19.)

§ 96-11.5. Contributions credited to wrong account.

(a) **Refund of Contributions Credited to Wrong Account.** – When contributions are credited to the wrong account, the erroneous credit may be adjusted only by refunding the employer who made the payment that was credited in error. This applies regardless of whether the

employer to whom the payment was credited in error is a related entity of the employer to whom the payment should have been credited. An employer whose payment is credited to the wrong account may request a refund of the amount erroneously credited by filing a request for refund within five years of the last day of the calendar year in which the erroneous credit occurred.

(b) **Effect on Contribution Rate.** – Failure of the Division to credit the correct account for contributions does not affect the contribution rate determined under G.S. 96-9.2 for either the employer whose account should have been credited for the contributions or the employer whose account was credited, and it does not affect the liability of an employer for contributions determined under those rates. No prior contribution rate for either of the employers may be adjusted even though the contribution rates were based on incorrect amounts in their account. An employer is liable for contributions determined under those rates for the five calendar years preceding the year in which the error is determined. This applies regardless of whether the employer acted in good faith. (2013-2, s. 4; 2013-224, s. 19.)

§ 96-11.6. Interest on Unemployment Insurance Fund allocated among employers' accounts.

The Division must determine the ratio of the credit balance in each employer's account to the total of the credit balances in all employers' accounts as of the computation date. The Division must allocate an amount equal to the interest credited to this State's account in the Unemployment Trust Fund for the four completed calendar quarters preceding the computation date on a pro rata basis to these accounts. The amount must be prorated to an employer's account in the same ratio that the credit balance in the employer's account bears to the total of the credit balances in all the accounts. Voluntary contributions made by an employer after July 31 of a year are not considered a part of the employer's account balance used in determining the allocation under this section until the computation date in the following year. (2013-2, s. 4; 2013-224, s. 19.)

§ 96-11.7. Transfer of account to another employer.

(a) **Acquisition of a Business.** – When an employer acquires all of the business of another employer, the account of the predecessor must be transferred as of the date of the acquisition to the successor for use in the determination of the successor's contribution rate. This subsection does not apply when there is no common ownership between the predecessor and the successor and the successor acquired the assets of the predecessor in a sale in bankruptcy.

(b) **Acquisition of Portion of a Business.** – When a distinct and severable portion of an employer's business is transferred to a successor employer and the successor employer continues to operate the acquired business, the portion of the account attributable to the transferred business may, with the approval of the Division, be transferred by mutual consent to the successor employer as of the date of the transfer. A successor employer that is a related entity of the transferring employer is eligible for a transfer from the transferring employer's account only to the extent permitted by rules adopted by the Division. No transfer may be made to the account of an employer that has ceased to be an employer under G.S. 96-11.9.

If a transfer of part or all of an account is allowed under this subsection, the successor employer requesting the transfer may make a request for transfer by filing an application for transfer with the Division within two years after the date the business was transferred.

(c) **Acquisition by Related Party.** – If an employer transfers its business, or a portion thereof, to another person and, at the time of the transfer, there is substantially common ownership, management, or control of the predecessor employer and the transferee, then the portion of the

account attributable to the transferred business must be transferred to the transferee as of the date of the transfer for use in the determination of the transferee's contribution rate.

Substantially common ownership, management, or control exists if one or more persons, entities, or other organizations owning, managing, or controlling the business maintain substantial ownership, management, or control of the transferee. Control may occur by means of ownership of the organization conducting the business, ownership of assets necessary to conduct the business, security arrangements or lease arrangements covering assets necessary to conduct the business, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business. Control is not affected by changes in the form of a business, reorganization of a business, or expansion of a business.

(c1) Acquisition to Obtain Lower Contribution Rate. – The account of the predecessor employer will not be transferred if the Division finds that a person formed or acquired the business solely or primarily for the purpose of obtaining a lower contribution rate.

(d) Contribution Rate. – If the effective date of a transfer of an account under this section is after the computation date in a calendar year, the Division must recalculate the contribution rate for the predecessor employer and the successor employer based on their account balances on the effective date of the account transfer.

(e) Liability for Contributions. – An employer that, by operation of law, purchase, or otherwise is the successor to an employer liable for contributions becomes liable for contributions on the day of the succession. This subsection does not affect the successor's liability as otherwise prescribed by law for unpaid contributions due from the predecessor.

(f) Deceased or Insolvent Employer. – When the business of a deceased person or of an insolvent debtor is taken over and operated by an administrator, executor, receiver, or trustee in bankruptcy, the new employer automatically succeeds to the account and contribution rate of the deceased person or insolvent debtor without the necessity of filing an application for the transfer of the account.

(g) Continuation of Existing Account. – Any transferee subject to a complete transfer of account under this section must not request or maintain an account with the Division other than the account of the existing business. If a transferee receives a new account and the Division subsequently finds that the transferee is subject to a complete transfer of account under this section, the Division must recalculate the annual tax rates based on the combined annual account balances of the new employer and the existing business. (2013-2, s. 4; 2013-224, s. 19; 2016-4, s. 1; 2017-8, s. 4(a).)

§ 96-11.8. Closure of account.

(a) Account Closed. – When an employer ceases to be an employer under G.S. 96-11.9, the employer's account must be closed and may not be used in any future computation of the employer's contribution rate. An employer has no right or claim to any amounts paid by the employer into the Unemployment Insurance Fund.

(b) Exception for Active Duty. – If the Division finds that an employer's business is closed solely because one or more of its owners, officers, or partners or its majority stockholder enters into the Armed Forces of the United States, an ally, or the United Nations, the employer's account may not be terminated. If the business resumes within two years after the discharge or release of the affected individual from active duty in the Armed Forces of the United States, the employer's account is considered to have been chargeable with benefits throughout more than 13 consecutive calendar months ending July 31 immediately preceding the computation date. This subsection

applies only to an employer that makes contributions under G.S. 96-9.2. This subsection does not apply to an employer that makes payments in lieu of contributions under G.S. 96-9.6. (2013-2, s. 4; 2013-224, s. 19.)

§ 96-11.9. Termination of coverage.

(a) By Law. – An employer that has not paid wages for two consecutive calendar years ceases to be an employer liable for contributions under this Chapter.

(b) By Application. – An employer may file an application with the Division to terminate coverage. An application for termination must be filed prior to March 1 of the calendar year for which the employer wishes to cease coverage. The Division may terminate coverage if it finds that the employer was not liable for contributions during the preceding calendar year. Termination of coverage under this subsection is effective as of January 1 of the calendar year in which the application is granted.

(c) After Reactivation. – If the Division reactivates the account of an employer that has been closed, the employer may file an application with the Division to terminate coverage. The application must be filed within 120 days after the Division notifies the employer of the reactivation of the employer's account. The Division may terminate coverage if it finds that the employer was not liable for contributions during the preceding calendar year. Termination of coverage under this subsection is effective as of January 1 of the calendar year in which the application is granted. An employer's protest of liability upon reactivation is considered an application for termination.

(d) After Discovery. – When the Division discovers that an employer is liable for contributions for a period of more than two years, the employer may file an application with the Division to terminate coverage. The application must be filed within 90 days after the Division notifies the employer of the discovered liability. The Division may terminate coverage if it finds that the employer was not liable for contributions during the preceding calendar year. An employer's protest of liability upon discovery is considered an application for termination. An employer is not eligible for termination of liability under this subsection if the employer willfully attempted to defeat or evade the payment of contributions. (2013-2, s. 4; 2013-224, s. 19.)